

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

DEVIN A. WHITTIER, Individually,

Plaintiff,

v.

SEATTLE TUNNEL PARTNERS, a joint
venture; HARRIS REBAR SEATTLE, INC.,
a Delaware corporation;

Defendants.

Case No. 2:17-cv-00751

**PLAINTIFF'S MOTION TO
REMAND CASE TO STATE
COURT**

NOTE ON MOTION CALENDAR
FRIDAY, JULY 7, 2017

Pursuant to Rule 15(a), Plaintiff hereby submits this motion and moves the Court for an order remanding this case to state court pursuant to 28 U.S.C. § 1447(c) for failure to timely file a Notice of Removal pursuant to 28 USC 1441 and Local Rules W.D. Wash. 101 (b) (1), and for an award of attorneys' fees and costs incurred as a result of Defendant's petition for removal. For the Court to assume jurisdiction, the petition for removal must prove that the jurisdictional statutory requirements and local court rules were met. Because the Defendant failed to carry that burden, remand is necessary. Defendant's petition for removal was procedurally defective because, among

1 other procedural defects, they failed to file the operative complaint and did not cure
 2 this defect within the time allotted by Local Rule 101(b). As a result, this case must
 3 be remanded to state court.

4 **I. RELIEF REQUESTED**

5 The only basis for federal jurisdiction of this matter is diversity of citizenship
 6 under 28 U.S.C. § 1332. Federal courts have jurisdiction on the basis of diversity
 7 jurisdiction over matters where the amount in controversy is in excess of \$75,000.00
 8 and where the matter is between citizens of different states. 28 U.S.C § 1332(a). Proper
 9 jurisdiction under Section 1332 requires complete diversity. This matter involves a joint
 10 venture between Dragados USA, Inc. ("Dragados") and Tutor Perini Corporation
 11 ("Tutor Perini") forming a joint venture called Seattle Tunnel Partners "STP".
 12 Defendant STP, Dragados USA, Inc. and Tutor Perini Corporation as a joint venture
 13 was contracted by the Washington State Department of Transportation to construct the
 14 Seattle Tunnel Partners Project (the Highway 99 Bore Tunnel Alternative Design-Build
 15 Project). By all appearances, the joint venture partners are all foreign corporations and
 16 have contracted with another Defendant, Harris Rebar, Inc., also a foreign corporation.

17 This case was removed to federal court pursuant to 28 U.S.C. § 1441 which
 18 provides in relevant part:

- 19 (a) Generally — A defendant or defendants desiring to remove any civil
 20 action from a state court shall file in the district court of the United
 21 States for the district and division within which such action is
 22 pending a notice of removal signed pursuant to Rule 11 of the
 23 Federal Rules of Civil Procedure and containing a short and plain
 24 statement of the grounds for removal, together with a copy of all
 25 process, pleadings, and orders served upon such defendant or
 26 defendants in such action.

Defendant herein failed to comply with the requirement that the notice of removal be filed together with a copy of all process, pleadings and orders served on the Defendant in such action. Further, Defendant failed to comply with Local Rules W.D. Wash. 101 (b)(1) specifying the required contemporaneous filing of an operative complaint as a separate attachment in the electronic filing system. Additionally, Local Rule W.D. Wash. 101 (b)(3) requires a separate attachment labeled "Jury Demand" if one was filed in the state court. Plaintiff's Amended Complaint included a demand for a jury trial. (*See Plaintiff's First Amended Complaint for Damages – Exhibit 1*). Defendant did not file a separate attachment labeled "Jury Demand" as required by Local Rule W.D. Wash. 101 (b)(3). Defendant also failed to properly file its Civil Cover Sheet as required by JS 44 as it was filed a day late and also unsigned by the attorney of record.

Plaintiff respectfully requests this Court to remand this matter to state court and to award Plaintiff attorney's fees incurred in bringing this motion pursuant to 28 U.S.C § 1447(c).

II. STATEMENT OF FACTS

This case arises from personal injuries sustained by Plaintiff on February 12, 2015, in Seattle, Washington, when he was working on the Seattle Tunnel Partners, Highway 99 Bore Tunnel Alternative Design-Build Project on the Alaskan Way Viaduct in Seattle, King County, Washington. Plaintiff's First Amended Complaint for

1 Personal Injuries and Damages was filed in King County Superior Court on April 4,
 2 2017, under King County Cause No. 17-2-04219-6 SEA. Defendants STP, Dragados,
 3 Tutor Perini and Harris Rebar, Inc., were all served on April 14, 2017, with Plaintiff's
 4 First Amended Complaint for Personal Injuries and Damages, the Amended Summons,
 5 the Order Setting Civil Case Schedule and the Case Information Cover Sheet and Area
 6 Designation Cover Sheet. Plaintiff's Confirmation of Service as well as all four
 7 Declarations of Service were filed on May 12, 2017. *See* Declaration of R. Randall
 8 Harrison ***Exhibit 1 – Plaintiff's Amended Complaint.***

9 The ECF Docket shows Defendant's Notice of Removal was filed on May 15, 2017. On
 10 May 16, 2017, notice from the United States District Court Clerk, Western District of
 11 Washington at Seattle, was provided to the Defendant informing Defendant that the
 12 required Civil Cover Sheet and the LCR 101(b) operative complaint "attachment" were
 13 not included with the Notice of Removal in the electronic filing system. On May 16,
 14 2017 defendant added an "unsigned" Civil Cover Sheet and the operative Amended
 15 Complaint required by the rule. *See* Declaration of R. Randall Harrison ***Exhibit 2 -***
 16 ***Civil Cover Sheet dated May 16, 2017, unsigned, filed by Defendant.***

17 Pursuant to 28 USC § 2071 and Fed. R. Civ. P. 83, the judges of the Western
 18 District of Washington adopted Local Rules for civil proceedings before the United
 19 States District Court for the Western District of Washington. Local Rules W.D. Wash.
 20 101 provides in relevant part:

REMOVED CASES –

(a) **Unspecified Damages in Complaint.** If the complaint filed in state court does not set forth the dollar amount prayed for, a removal petition shall nevertheless be governed by the time limitation of 28 U.S.C. § 1446(b) if a reasonable person, reading the complaint of the plaintiff, would conclude that the plaintiff was seeking damages in an amount greater than the minimum jurisdictional amount of this court. The notice of removal shall in that event set forth the reasons which cause petitioner to have a good faith belief that the plaintiff is seeking damages in excess of the jurisdictional amount of this court notwithstanding the fact that the prayer of the complaint does not specify the dollar damages being sought.

(b) **Documents to Be Filed with Notice of Removal.** In cases removed from state court, the removing defendant(s) shall file contemporaneously with the notice of removal

(1) A copy of the operative complaint, which must be attached as a separate “attachment” in the electronic filing system and labeled as the “complaint” or “amended complaint.”

(2) A certificate of service which lists all counsel and pro se parties who have appeared in the action with their contact information, including email address.

(3) A copy of any Jury Demand filed in the state court, which must be filed as and labeled “Jury Demand.”

Fed. R. Civ. P. 6 governs computation of time when any time period is in the FRCP, local rules or any court order, or any statute that does not specify a method of computing time. Under this rule the completed Notice of Removal was not accomplished until May, 16, 2017. This is 31 days after service of the operative complaint was served on Defendant pursuant to Fed. R. Civ. P. 6 (a)(1) (A)(B) and (C).

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III. STATEMENT OF ISSUES

Should the Court consider the failure to strictly comply with 28 U.S.C. § 1441 and Local Rules W.D. Wash. 101(b) to require the remand of this case to state court?

IV. EVIDENCE RELIED UPON

1. This motion and memorandum in support.
2. Defendant's Notice of Removal [Dkt. #1].
3. ***Exhibit 1*** to Plaintiff's Motion to Remand – Amended Complaint;
4. ***Exhibit 2*** to Plaintiff's Motion to Remand - Case Civil Cover Sheet unsigned by attorney of record;
5. Declaration of R. Randall Harrison in Support of Plaintiff's Motion to Remand.

V. ARGUMENT

A. Removal Standard Under 28 U.S.C. § 1441.

A defendant may generally remove to federal district court “any civil action brought in a state court of which the district courts of the United States have original jurisdiction. 28 U.S.C. § 1441(a). However, the court must remand if the removal fails to comply with the statutory requirements. Courts are to strictly construe the removal statute in favor of remand to protect the jurisdiction of state courts. *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005). The defendant always has the burden of proving removal was proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The court must reject the exercise of jurisdiction if there is any doubt as to the right of removal in the first instance. *Id.*

B. Defendant's petition for removal is procedurally defective because Defendant failed to file the operative complaint with the initial Notice of Removal required by 28 USC 1441 and the local rule.

Although remand might appear to be a harsh remedy for procedural defects, courts have strictly enforced the rules. *See Employers-Shopmens Local 516 v. Travelers*, 2005 WL 1653629, *4 (d. Or. July 6, 2005) (“[A]ny defect in removal procedural must be cured within the [stated] period or it is fatal to the removal.”); *Andalusia v. Evanston Ins. Co.*, 487 F. Supp. 2d 1290, 1300 (N.D. Ala.) (“§ 1446(a) would be virtually meaningless if a removing defendant can cure its procedural error at any time before order of remand is entered”); *Kisor v. Collins*, 338 F. Supp. 2d 1279, 1281 (N.D. Ala. 2004); *Durand v. Hartford*, 2007 WL 1395336, *1 (D. Colo. May 9, 2007) (“If strict construction is the command, it is incumbent that the Court apply the statute strictly as written, even – or perhaps particularly – in the face of seemingly inconsequential defects.”).

This Court has remanded cases with less severe procedural defects than the procedural defects present in this case. Recently, Judge Coughenour remanded a class action because the defendant failed to file the Case Information Cover Sheet from the state court proceeding. *Stanphill v. State Farm*, 2:09-cv-00235-JCC (W.D. Wash. June 26, 2009). More recently, Judge Robart remanded a class action because the defendant did not comply with the requirements of Local Rule 101(b) and did not cure the procedural defect in a timely manner. *Benson v. Providence Health & Services*, 2:09-cv-01560-JLR (W.D. Wash. Feb. 11, 2010) (“because [the defendant] failed to provide

1 the complete records and proceedings in the state court, as required by 28 U.S.C. §
 2 1447(b) and Local Rule 101(b), and because [the defendant] failed to cure this
 3 procedural defect in a timely manner, this case must be remanded to state court.”) In
 4 *Stanphill, Id.*, defendants failed to file the Case Information Cover Sheet and failed to
 5 file the state court documents timely. As in *Stanphill* and *Benson, supra*, this case
 6 must be remanded to state court.

7
 8 **C. The Court Should Award Plaintiff’s Attorneys Fees Pursuant to 28**
 9 **U.S.C § 1447(c).**

10 “An order remanding the case may require payment of just costs and any actual
 11 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C §
 12 1447(c). The trial court may award fees for improper removal where the removal is
 13 wrong as a matter of law. *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 864 (9th Cir.
 14 2003). Where the removing party lacks an objectively reasonable basis for seeking
 15 removal, courts may award fees under 28 U.S.C § 1447(c). *Martin v. Franklin Capital*
 16 *Corp.*, 546 U.S. 132, 141 (2005). The purposes of such awards are to reimburse
 17 plaintiffs for wholly unnecessary litigation costs caused by defendants. *Moreno v. Select*
 18 *Portfolio Servicing, Inc.*, 2010 WL 2525980, *12 (E.D. Cal. June 23, 2010). “Absent
 19 unusual circumstances, courts may award attorney’s fees under § 1447(c) only where the
 20 removing party lacked an objectively reasonable basis for seeking removal.” *Martin v.*
 21 *Franklin Capital Corp.*, 546 U.S. 132, 141 (2005) (emphasis added). This balance is to
 22 assure the party seeking removal has every opportunity to avail itself of the federal court
 23
 24
 25

venue where provided by law. However, when the defendant waits until day 30 to file and then fails to comply with the explicit rules governing practice before the court, there is no objective reasonable basis for seeking removal. The court should award attorney's fees as just costs and actual expenses as provided in 28 USC §1447(c).

VI. CONCLUSION

In the removal petition, Defendant did not carry its burden of setting forth facts supporting the Court's exercise of jurisdiction over this case. The removal statute is strictly construed against federal jurisdiction. Due to the strong presumption against removal jurisdiction, a federal court must resolve any doubt in favor of remand. Here, the Court does have a record that the Defendant has failed to strictly comply with the statute and the local rule. Accordingly, it is respectfully requested that this Court remand this case to state court for all further proceedings and award Plaintiff Devin Whittier his attorney's fees and costs.

DATED June 13, 2017.

TORRONE LAW OFFICES, LLC

/s/ R. RANDALL HARRISON

R. Randall Harrison, WSBA No. 16514
705 S. 9th Street, Suite 201
Tacoma, WA 98405
Telephone: (253) 327-1282
Facsimile: (253) 369-3123
Email: randy@randyharrisonlaw.com
Attorneys for Plaintiff

DECLARATION OF SERVICE

The undersigned pursuant to the laws of the state of Washington and the United States of America and pursuant to RCW 9A.72.085 makes the following declaration that is true and correct under penalty of perjury. The undersigned hereby certifies that on June 13, 2017, I electronically filed the foregoing with the Clerk of the Court by uploading to the CM/ECF system, which will send notification of such filing to all attorneys of record.

On the date given below, I also caused to be sent out for service a true and correct copy of the foregoing on the following parties in the manner indicated:

<i>Defendant STP Counsel</i> Michael A. Jaeger, WSBA #23166 Keith M. Hayasaka, WSBA #51949 LEWIS BRISBOIS BISGAARD & SMITH, LLP 1111 Third Ave. Suite 2700 Seattle, Washington 98101 Attorneys for Defendants Seattle Tunnel Partners Michael.Jaeger@lewisbrisbois.com Keith.Hayasaka@lewisbrisbois.com Ricco.Sanchez@lewisbrisbois.com	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via UPS overnight service <input type="checkbox"/> via Legal Messenger Hand Delivery <input checked="" type="checkbox"/> via CM/ECF <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via Email
<i>Defendant Harris Rebar Seattle, Inc. Counsel</i> Timothy J. Repass, WSBA #38373 Gavin M. Radkey, WSBA #48253 WOOD, SMITH, HENNING & BERMAN, LLP 520 Pike Street, Suite 1525 Seattle, Washington 98101-4001 Attorneys for Defendants Harris Rebar Seattle, Inc. trepass@wshblaw.com gradkey@wshblaw.com	<input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via UPS overnight service <input type="checkbox"/> via Legal Messenger Hand Delivery <input checked="" type="checkbox"/> via CM/ECF <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via Email

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 13th day of June, 2017, at Tacoma, Washington.

TORRONE LAW, LLC

By: /s/ Donna Lopan
Donna Lopan, Paralegal
705 S. 9th Street, Suite 201
Tacoma, WA 98405
(253) 327-1282
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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE WESTERN DISTRICT OF WASHINGTON
8 SEATTLE DIVISION

9 DEVIN A. WHITTIER, Individually,

10 Plaintiff,

11 v.

12 SEATTLE TUNNEL PARTNERS, a joint
13 venture; HARRIS REBAR SEATTLE, INC.,
14 a Delaware corporation;

15 Defendants.

Case No. 2:17-cv-00751

**DECLARATION OF R.
RANDALL HARRISON IN
SUPPORT OF PLAINTIFF'S
MOTION TO REMAND CASE
TO STATE COURT**

16 I, R. RANDALL HARRISON, declare as follows:

- 17 1. I am one of the attorneys of record for the Plaintiff herein. I am of legal age, have
18 personal knowledge of the facts set forth herein, and am otherwise competent to testify.
19
20 2. Attached as **EXHIBIT 1** to this declaration is a true and correct copy of Plaintiff's
21 Amended Complaint filed on April 4, 2017, in King County Superior Court under
22 Cause No. 17-2-04219-6 SEA in the case of *Whittier v. Seattle Tunnel Partners, et al.*

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24
25
26 DECLARATION OF R. RANDALL HARRISON
IN SUPPORT OF PLAINTIFF'S MOTINO TO REMAND
CASE TO STATE COURT - 1
Whittier v. STP, et al
Case No. 2:17-cv-00751

TORRONE LAW, LLC
705 South 9th Street, Suite 201
Tacoma, WA 98405
(253) 327-1280

1 3. Attached as **EXHIBIT 2** to this declaration is a true and correct copy of the unsigned
2 Civil Case Cover Sheet filed by counsel for Defendant STP in the Federal Court
3 matter, Case No. 2:17-cv-00751-RSL.

4 I declare under penalty of perjury under the laws of the State of Washington, that the
5 foregoing is true and correct to the best of my knowledge.

6 Dated at Tacoma, WA this 13th day of June, 2017.

7 **TORRONE LAW, LLC**

8 // R. RANDALL HARRISON

9
10 R. RANDALL HARRISON, WSBA 16514
11 705 S. 9th Street, Suite 201
12 Tacoma, WA 98405
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14 Email: randy@randyharrisonlaw.com

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26 DECLARATION OF R. RANDALL HARRISON
IN SUPPORT OF PLAINTIFF'S MOTINO TO REMAND
CASE TO STATE COURT - 2
Whittier v. STP, et al
Case No. 2:17-cv-00751

TORRONE LAW, LLC
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Tacoma, WA 98405
(253) 327-1280

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DEVIN A. WHITTIER, Individually,
Plaintiff,

v.

SEATTLE TUNNEL PARTNERS, a joint
venture; HARRIS REBAR SEATTLE, INC., a
Delaware corporation,
Defendants.

CAUSE NO. 17-2-04219-6 SEA

**FIRST AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES**

COMES NOW the Plaintiff, DEVIN A. WHITTIER, individually, by and
through his counsel of record, R. Randall Harrison and Christopher G. Torrone of
TORRONE LAW OFFICE, LLC, and for his cause of action against the named
defendants herein, alleges and states as follows:

I. PARTIES

1.1 That the Plaintiff, Devin A. Whittier, was at all times material herein not
married and an individual resident of Puyallup, Pierce County, State of Washington.

1 1.2 Defendant Seattle Tunnel Partners (“STP”) is a joint venture of
2 Dragados USA, Inc., and Tutor Perini Corporation, and was contracted to construct the
3 Seattle Tunnel Project for the Washington State Department of Transportation.

4 1.3 Dragados USA, Inc., is a Delaware corporation, is registered to do business
5 in the State of Washington, and at all times material hereto was doing business in King
6 County, Washington in joint venture with Tutor Perini Corporation.

7
8 1.4 Tutor Perini Corporation, is a Massachusetts corporation, registered to do
9 business in the State of Washington, and at all material times hereto was doing business
10 in King County, Washington in joint venture with Dragados USA, Inc.

11 1.5 Harris Rebar Seattle, Inc., is a Delaware Corporation, registered to do
12 business in the State of Washington, and at all times material hereto was doing business
13 in King County, Washington, as a subcontractor on the Seattle Tunnel Project.

14 II. JURISDICTION AND VENUE

15
16 2.1 This court has subject matter jurisdiction under RCW 2.08.010.

17 2.2 This court has personal jurisdiction over STP under RCW 4.28.185
18 because STP does business and owns property in Washington.

19
20 2.3 This court has personal jurisdiction over Harris Rebar Seattle, Inc., under
21 RCW 4.28.185 because Harris Rebar Seattle, Inc. does business and owns property in
22 Washington.

23 2.4 Venue is proper in King County under RCW 4.12.025(1) because STP and
24 Harris Rebar were doing business in King County, Washington.

III. FACTS

3.1 Defendant STP was the general contractor on the SR 99 Bored Tunnel Alternative Design Build Project.

3.2 On December 10, 2010 the General Contractor, through their authorized agents, James Frost, Tutor Perini Corporation and Fernando Gonzales Alcañiz, Dragados U.S.A., Inc., members of joint venture Defendant STP entered into a Design-Build Contract (the "Contract") with the Washington State Department of Transportation ("WSDOT") in which STP agreed to perform certain design, engineering and construction services for the SR 99 Bored Tunnel Alternative Design-Build Project on the Alaskan Way Viaduct in Seattle, King County, Washington (the "Project").

3.3 The December 10, 2010 Contract required STP to adhere to certain performance standards including providing a project manager who would be present or have an approved designee present at the project site at all times during construction while work was being performed. The Contract also provided for STP to comply with all laws and to supervise and be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures and site safety.

3.4 The December 10, 2010 Contract required STP to be solely responsible for coordinating all portions of the work at the project site.

3.5 Defendant STP's contract required and obligated it to take all reasonable precautions and have the duty and responsibility for safety on the Project worksite.

1 3.6 Defendant STP also contracted to comply with an apprentice utilization
2 requirement pursuant to a State-approved apprentice training program provided by the
3 Department of Labor and Industries.

4 3.7 Defendant General Contractor STP entered into a Subcontract with Harris
5 Rebar Seattle, Inc., through their authorized agent, Lyall Hadden, on February 1, 2012.
6 The scope of subcontractor Harris Rebar's work was providing reinforcing steel at the SR
7 99 Project. Harris Rebar's portion of the Project consisted of installation of reinforcing
8 steel in pile caps, cont. footings, slab on grade, elevated two way slab, slab on metal deck,
9 tunnel, grade beams, deck beams, column dowels, typical columns, CIP walls, wall
10 dowels, site work, curbs, elevator pit and stair footing.
11

12 3.8 Defendant STP also entered into a second subcontract with Harris Rebar
13 Inc., through its authorized agent, Mark Pequegnat, on July 15, 2013. The scope of this
14 subcontract was to fabricate and install the reinforcing steel for the North and South
15 Operations buildings and Mitigation buildings for the SR 99 Project. Defendant Harris
16 Rebar was to furnish and install to the satisfaction of the Contractor, all labor, equipment,
17 materials, supplies, services, cost of all applicable sales or use taxes, fees, permits, etc.
18 including but not limited to the following items of work: reinforcing steel and supports
19 for the North Operations, South Operations and Mitigation buildings.
20

21 3.9 Defendant Harris Rebar Seattle, Inc., subcontracted with its wholly owned
22 subsidiary, Central Steel, Inc., to provide labor for the fulfillment of its contractual
23 obligations to the Project.
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1
2 3.10 Central Steel, Inc. employed Plaintiff Devin A. Whittier as an ironworker.

3 3.11 Defendant Harris Rebar Seattle, Inc.'s responsibilities as subcontractor
4 were to provide a Project Superintendent to oversee the Project Safety Program and to
5 ensure that all inspections, reporting and records required by the Site Specific Safety Plan
6 and the Company Injury and Illness Prevention Program were being completed and
7 submitted.
8

9 3.12 Defendant Harris Rebar Seattle, Inc.'s responsibilities as subcontractor
10 were to provide a Project Foreman to implement and enforce the Site Specific Safety Plan
11 and the Company Injury and Illness Prevention Program and to conduct continual
12 observational safety checks and assess the safety of the operations assigned and to see
13 that any unsafe acts or conditions were corrected as required and to immediately report all
14 accidents, injuries and near miss incidents to the General Contractor.
15

16 3.13 Defendant Harris Rebar's responsibilities as subcontractor was to provide
17 employees who were adequately trained and supervised to understand and adhere to the
18 policies and procedures of the Site Plan and to federal, state, local and project regulations.
19

20 3.14 Defendant Harris Rebar's Project General Foreman was responsible for
21 conducting visual inspections and for reporting of any unsafe acts or condition on the
22 jobsite to the Project Superintendent for immediate correction; and the Project
23 Superintendent was responsible for documenting any unsafe conditions and corrections at
24 the jobsite in his/her daily report.
25

1 3.15 Defendant Harris Rebar's Safety Coordinator and Field Safety Officer
2 were responsible for conducting periodic site safety assessments and for submitting
3 written reports to the Safety Officer.

4 3.16 Defendant Harris Rebar's Branch Manager Safety Officers were
5 responsible for the Safety Program's effectiveness. It was the responsibility of the Harris
6 Rebar Safety Officer to identify and communicate any hazards and corrections of unsafe
7 conditions at the Project site.
8

9 3.17 Defendant Harris Rebar's Field Superintendent was responsible for the
10 monitoring of the Project site for hazards or unsafe working conditions through personal
11 observations and to keep a written record of the inspections and to participate in site
12 inspections with the appointed safety officials and to implement corrective measures as
13 required to ensure safety at the Project site.
14

15 3.18 STP and Harris Rebar were responsible for general construction services
16 to the Project including insuring that all protruding pieces of reinforcing rebar were
17 significantly protected with sufficient means to prevent the impalement of workers
18 installing rebar directly above the exposed rebar.
19

20 3.20 On February 12, 2015, Plaintiff Devin A. Whittier was an apprentice
21 ironworker for employer Central Steel, Inc., and was performing construction work on the
22 Project.
23

24 3.21 On February 12, 2015, Plaintiff Whittier along with other crew members
25 were working at the construction site in the elevator pit when the rebar wall that they
26

1 were constructing detached from the forms and fell away with the employees attached to
2 the rebar wall.

3 3.22 Plaintiff Whittier was impaled by a protruding piece of reinforcing bar and
4 severely injured. The protruding piece of rebar was insufficiently protected with
5 sufficient means to prevent the impalement.

6
7 **IV. CAUSES OF ACTION-TORTIOUS CONDUCT**

8 4.1 The Defendant STP, as the General Contractor, had a common law non-
9 delegable legal duty to the Plaintiff as an employee of a subcontractor, Central Steel, Inc.
10 to provide a safe place of work. The Defendant breached that duty. This breach
11 proximately caused injury and damage to the Plaintiff.

12 4.2 The Defendant Harris Rebar negligently failed to provide the
13 Plaintiff with a safe place to work at the Project site; this failure proximately caused
14 injury and damages to the Plaintiff.

15 4.3 The Defendants STP and Harris Rebar failed to follow and comply with
16 applicable OSHA, WISHA and various other regulations, including but not limited to
17 administrative, technical and safety regulations at the Project site; and were in violation
18 of WAC 296-155-680(7)(a) and WAC 296-155-680(7)(c) and these failures proximately
19 caused injury and damage to the Plaintiff.

20 4.4 The Defendants STP and Harris Rebar negligently failed to provide
21 adequate safety training of the employees and subcontractors; these failures proximately
22 caused injury and damage to the Plaintiff.

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2 4.5 The Defendants STP and Harris Rebar negligently failed to provide
3 adequate supervision of subcontractors and employees on the Project and this failure
4 proximately caused injury and damage to the Plaintiff.

5 4.6 The Defendants STP and Harris Rebar negligently failed to properly
6 institute and supervise safety procedures and practices of its employees and
7 subcontractors on the Project; these failures proximately caused injury and damage to the
8 Plaintiff.

9
10 4.7 There are no other entities liable or responsible for the injuries and
11 damages suffered by Plaintiff.

12 4.8 Plaintiff Devin A. Whittier did not breach any duty to himself and was not
13 negligent in this matter.
14

15
16 **V. DAMAGES**

17 5.1 Plaintiff Devin A. Whittier as a direct and proximate result of the
18 negligent acts and/or omissions of the Defendants STP and Harris Rebar, has suffered
19 severe and grievous bodily injury, permanent disability, bodily impairment, pain and
20 suffering, past and future economic loss, and has incurred medical and other expenses and
21 will continue to incur medical and related expenses and expenses from relying on the help
22 and assistance from family members and friends to provide necessary services for various
23 needs created by his injuries and medical conditions in the future. Plaintiff Devin A.
24
25

1 Whittier as a further proximate result will continue to experience pain and suffering, both
2 mental and physical, disability, disfigurement, and loss of enjoyment of life.
3 Additionally, Plaintiff Devin A. Whittier has suffered other special and general damages
4 that shall be proven at the time of trial.

5 **VI. LIMITED PHYSICIAN-PATIENT PRIVELEGE WAIVER**

6
7 6.1 Plaintiff Devin A. Whittier, pursuant to RCW 5.60.060, as amended by
8 the laws of 1986, hereby grant limited waiver of the physician-patient privilege. The
9 scope of this waiver is as follows:

10 A. This waiver shall take effect regarding this lawsuit for personal injuries on
11 the 89th day from the date the action was filed;

12 B. This waiver shall be subject to such limitations as the Court may impose.
13 The waiver shall at all times be limited by an order entered in connection
14 therewith by the King County Superior Court; and

15 C. This waiver shall only apply to the privilege which exists under RCW
16 5.60.060 and shall not be deemed to be broader in its scope nor apply to
17 physician-patient privileges nor governed by RCW 5.60.060. Constitutional
18 rights of privacy, impairment or interference with the doctor/patient relationship,
19 and other rights not governed by RCW 5.60.060 regarding physician-patient
relationships are not waived. This waiver is made solely to comply with the legal
obligation required by the 1986 amendment to RCW 5.60.060 requiring such
waiver within 90 days of the filing of an action for personal injuries.

20 **VII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against the named Defendants herein,
22 jointly and severally, as follows:

23 1. For general damages in an amount sufficient to fully compensate the Plaintiff
24 for his injuries and loss in an amount to be proven at trial;
25

4. For such other and further relief as the Court may deem just and equitable in the circumstances.

DATED April 3, 2017.



R. Randall Harrison, WSBA No. 16514
Attorney for Plaintiff

EXHIBIT 2

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Devin A. Whittier, individually

(b) County of Residence of First Listed Plaintiff Pierce County, WA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

R. Randall Harrison, WSBA #16514, Torrone Law LLC
705 South 9th Street, Suite 201, Tacoma, WA, 98405, (253) 732-9866

DEFENDANTS

Seattle Tunnel Partners, a joint venture; and Harris Rebar Seattle, Inc., a Delaware corporation

County of Residence of First Listed Defendant DE, MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Michael A. Jaeger, WSBA #23166/Keith M. Hayasaka, WSBA#51949
Lewis Brisbois Bisgaard & Smith LLP, 1111 Third Avenue, Suite 2700
Seattle, WA, 98101, (206) 436-2020

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sections 1332, 1441, 1446 (federal diversity jurisdiction)

Brief description of cause:

Plaintiff alleges personal injuries arising from a workplace accident on the Seattle Tunnel Project.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.